110 Greenwich Street Corp. and Henry A. Martuscello. Case 2–CA–26303

October 19, 1995

DECISION AND ORDER

By Chairman Gould and Members Browning and Cohen

The issue presented here is whether the judge correctly found the Respondent violated Section 8(a)(1) of the Act by discharging William J. Gaudreau Sr. and William J. Gaudreau Jr. because of their protected concerted activity. The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order, as modified below.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, 110 Greenwich Street Corp., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

- 1. Substitute the following for paragraph 1(a).
- "(a) Discharging or suspending its employees because they engage in protected concerted activities."
 - 2. Substitute the following for paragraph 2(b).
- "(b) Remove from its files any reference to the unlawful discharges and suspension, notify the employees in writing that this has been done and that the discharges and suspension will not be used against them in any way."

Kevin Smith, Esq., for the General Counsel.

Samuel Rosenberg, Esq., of New York, New York, for the Respondent.

319 NLRB No. 47

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, New York, on March 7, 1995. The complaint alleges that Respondent, in violation of Section 8(a)(1) of the Act, discharged William J. Gaudreau Sr. and William J. Gaudreau Jr. 1 The Respondent denies that it engaged in any violations of the Act and urges that the matter should be deferred to arbitration.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in April 1995, I make the following²

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, with its place of business at 110 Greenwich Street, New York, New York, is engaged in the operation and management of an office building. Annually, Respondent derives gross revenues in excess of \$100,000 of which in excess of \$25,000 is derived from commercial tenants who are directly engaged in interstate commerce. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

The building at 110 Greenwich Street is a nine-story office edifice that is the sole asset of Respondent. Above the doorway, the building bears the name Tyrrel. Three floors of the building are occupied by Benjamin H. Tyrrel, a printing company founded in 1867 and still owned by the Tyrrel family. Another occupant of the building is a company known as Tyrrel, Tyrrel, and Fiarello, or TTF. Thomas B. Tyrrel is the president of Respondent 110 Greenwich Street Corp. and he is the president of Benjamin H. Tyrrel. Thomas B. Tyrrel does not hold any position with TTF; that company is run by his cousin.³

For some years, Respondent had been experiencing financial difficulties; the building was not fully rented, Respondent was in arrears on real estate taxes, and the mortgage lender was commencing foreclosure proceedings. In 1989, the corporation had begun Chapter 11 bankruptcy proceedings. According to Thomas B. Tyrrel, the cash receipts of Respondent were not sufficient to meet all of its obligations. Tyrrel testified that on December 1, 1992, the bank accounts of Respondent were seized.

¹On July 12, 1995, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³We shall modify the judge's recommended Order to reflect the fact that the ultimate unlawful discipline imposed on employee William J. Gaudreau Jr. was a suspension. It is not neccessary to make any change in the judge's notice.

¹The Charging Party, Henry A. Martuscello, Esq., was the attorney for both Gaudreau Sr. and Gaudreau Jr. Attorney Martuscello did not appear at the instant hearing.

 $^{^2\,\}mathrm{The}$ record is corrected so that at p. 17, L. 19, the last two words read ''In Rem.''

³The ownership of Respondent and of Benjamin H. Tyrrel is not identical.

Respondent had employed a superintendent and various service employees to run the building. The employees were covered by a collective-bargaining agreement with Local 32B-32J, Service Employees International Union, AFL-CIO.4 William J. Gaudreau Sr. was hired in 1976 as the superintendent for the building. His duties included hiring and firing employees, devising the employees' work schedules, directing the employees, making up the payroll, assigning employees to work weekends, obtaining bids from contractors, overseeing contractors, and running the interior fire alarm system, the sprinkler system, and the stand pipe system. Gaudreau Sr. wore a uniform that bore the title "superintendent" next to his name and he did not punch a timeclock. Gaudreau Sr. received 6-hour overtime pay for acting as the superintendent. One of the service employees was his son, William J. Gaudreau Jr., who was hired in 1980 to run the elevators and perform handyman and maintenance work.

Gaudreau Sr. testified that in 1989 his duties were changed by Respondent. He had previously fired employees, and in 1989 he tried to fire an employee identified as Joe who had come to work inebriated and whose failure to perform his duties had caused tenants to call Gaudreau Sr. on the weekend with their complaints. Gaudreau Sr. confronted Joe and told him that he was finished and that he should no longer come in. When Gaudreau Sr. informed Thomas B. Tyrrel that he had fired Joe, Tyrrel said, "[N]o, no, no," and instructed Gaudreau Sr. that Joe should be returned to work after a few days off. Sometime after this, Joe came in drunk and reeking of alcohol. Again Gaudreau Sr. told Joe that he was fired, and again Thomas B. Tyrrel put Joe back to work. In 1989, Respondent laid off an employee named Clark Kahn but Gaudreau Sr. was not involved in this decision. Also in 1989, Gaudreau Sr. ceased doing the payroll. Whereas previously Gaudreau Sr. had computed hours, taxes, and takehome pay for all the service employees on a payroll sheet, this practice was abandoned. Employees now individually recorded their hours on a sheet kept downstairs and the sheet was brought upstairs by any one of the employees to Raymond G. Cohen, the controller of 110 Greenwich Street Corp.5 Gaudreau Sr. testified that after 1989 he was no longer responsible for scheduling the employees; a person identified as "Oswald" performed this function and Robert Tyrrel's son also made out employee schedules.6 In mid-1989, Gaudreau Sr. was required to perform work that had previously been performed by other employees such as providing relief to the elevator operators, performing porter work including sweeping the sidewalk and halls, cleaning the windows, and changing light bulbs. By 1989, according to Gaudreau Sr. he was punching a timeclock. In 1990 or 1991, the Respondent ordered new uniforms for the employees. For the first time, Gaudreau's uniform no longer bore the title "superintendent" next to his name; when he inquired about this change, the uniform company informed him that it had been instructed to omit the title. Around this time, Gaudreau

Sr. complained to management that an unqualified person had broken a valve in the building: Thomas B. Tyrrel responded by informing Gaudreau that he was not running the building. In 1991, Thomas B. Tyrrel told Gaudreau Sr. that he would no longer be paid an extra 6 hours' overtime because he was no longer doing the work of a superintendent. After calling the Union to protest the cut in pay, Gaudreau Sr. again received the 6-hour pay.

Respondent employs a number of so-called "fill in employees." These are persons who are called as substitutes when a regularly scheduled employee telephones to say that he will be unable to work his regular shift. Both Gaudreau Sr. and Gaudreau Jr. testified that any employee who happens to pick up the telephone and receives the information that someone is unable to work his regularly scheduled shift is authorized to telephone a fill-in employee and request that the fill-in employee report for work at the building. Gaudreau Sr. stated that Carlton Cash, who had worked as a messenger for Benjamin H. Tyrrel, and two other people could be called to fill in for absent employees. Gaudreau denied that he had hired these people.

Thomas B. Tyrrel testified that in 1992, Gaudreau Sr. hired and fired employees, and was responsible for employees' work assignments and their days off. He denied that he had changed the duties of Gaudreau Sr.; certain duties were added to for financial reasons. Tyrrel denied that he ever hired anyone; the only employees he fired were Gaudreau Sr. and Gaudreau Jr. Tyrrel stated that in 1992, Gaudreau Sr. had hired an employee named Carlton Cash. Respondent's controller, Raymond G. Cohen, testified that from 1989 to 1992, Gaudreau Sr. hired Carlton Cash and one or two other part-time employees; these employees were called by Gaudreau Sr. when they were needed. Cohen stated that Gaudreau Sr. handed in the timecards for other employees of the Respondent.

Although the employees' payday at 110 Greenwich Street was nominally on Tuesday, it was not uncommon for paychecks to be late. In fact, Thomas B. Tyrrel had agreed that if the employees' wages were going to be delayed, he would inform the employees 1 day in advance and would provide some interim pay. On Tuesday, December 1, 1992, at about noon, Gaudreau Sr. asked Thomas B. Tyrrel if the paychecks were ready. Tyrrel told Gaudreau, "I don't have any money; none of my companies are getting paid." Gaudreau protested that the employees had not been warned beforehand and then he called the Union. Later, the union shop steward called Gaudreau Sr. and told him that he had spoken to Thomas B. Tyrrel and that the employees might be paid by Friday. Gaudreau Sr. testified that no one had informed him on December 1 that Respondent's bank accounts had been seized. Although Tyrrel testified that he informed Gaudreau Sr. that he did not have sufficient funds to meet the payroll, Tyrrel did not state that he informed Gaudreau of the seizure of the accounts.

On the morning of Wednesday, December 2, 1992, Gaudreau Sr. parked his car on the public street in front of the Respondent's premises and posted several signs in the car windows. One sign stated, "Tyrrel Chapter 11." Another sign said, "B H Tyrrel, TTF, 110 Greenwich Corp. can't pay their employees' weekly salary. They have no money in the bank." Another sign said, "Christmas is around the corner. Pay your employees!!!" Yet another sign stated, "Wanted

⁴Respondent is a member of an employer association, the Realty Advisory Board, or RAB, and is bound by the contract between the RAB and Local 32B–32J.

⁵Cohen is also the chief financial officer of Benjamin H. Tyrrel. The record does not reveal whether Cohen has two separate offices or whether all of his functions are performed in a single location.

⁶Oswald has not been further identified in the record, and there are no details about Robert Tyrrel nor about his son.

by 110 Greenwich, tenants who pay their rent." Apparently, one sign exhorted, "Sell your Mercedes, sell your apartment in the DAC." At about 5:30 a.m., Gaudreau Sr. testified, Thomas B. Tyrrel came up to him on the street and asked what the signs meant. Gaudreau replied, "Only the truth," and Tyrrel said he was cutting off the hand that fed him. Thereupon, Gaudreau Sr. replied that his two hands fed him. After Thomas B. Tyrrel walked away, Gaudreau Jr. arrived and parked his car on the street. Father and son put signs in the younger Gaudreau's car windows. After that, the two men worked that morning in the regular fashion and there is no contention that they engaged in any slowdown or other action. At about 12:30 p.m., Gaudreau Sr. was fired. Thomas B. Tyrrel demanded his keys and handed him an envelope with a paycheck and a letter stating, that he was "terminated for cause.'

Thomas B. Tyrrel testified that on December 2, 1992, a customer of Benjamin H. Tyrrel complained about the signs in the cars, however, Tyrrel did not identify the customer nor did he give any details about the complaint. Similarly, Tyrrel stated that other tenants and employees in the building complained, but he gave no details at all about these complaints. I will not rely on the vague testimony of Tyrrel about complaints nor will I rely on his considerable hearsay testimony.

Thomas B. Tyrrel testified that he called the union agent on December 2, 1992. Tyrrel told the union agent that the signs were "just horrible" and, according to Tyrrel, the union agent replied that "the Union did not sanction the strike." On being reminded that there was no strike, Tyrrel amended his testimony to say that the Union did not "sanction the action." I will not credit this testimony. I observed Tyrrel and I am convinced that he testified to what he believed the union agent should have said to him but that he had no firm recollection of what was actually said. I will not credit Thomas B. Tyrrel's testimony concerning his conversation with the union agent.

On December 10, 1992, Gaudreau Sr. received a letter signed by Thomas B. Tyrrel stating as the cause for discharge

You publicly displayed signs detremental [sic] to our tenents [sic]. These signs have had an adverse impact on all employees and employers in the building. It is difficult enough to keep tenants in this environment without this display of hostility. I have overlooked numerous infractions in the past, but this is so extreme that it can't be overlooked or forgiven.⁸

Gaudreau Jr. testified that at about 11 a.m. on December 3, 1992, Thomas B. Tyrrel asked him to remove the signs from his car. Tyrrel did not give any reason why he wanted the signs removed. Gaudreau Jr. asked Tyrrel whether he would be paid. When Tyrrel replied that he would not be paid that day, the conversation ended. Gaudreau Jr. was dis-

charged at 1 p.m. He received in the mail the identical letter received on December 10 by his father and quoted above.

The Union filed a grievance and an arbitration was held. The award of the arbitrator, Robert Herzog, was rendered on September 7, 1993. The three-page arbitration award provides the following "Discussion."

The Arbitrator must determine if the Grievants were justly termintated [sic]. In the case of a Superintendent discharge, the collective bargaining agreement provides for the Arbitrator to give "due consideration to the Superintendent's fiduciary and management responsibilities and to the need for cooperation between the Superintendent and the Employer." This consideration applies only to Superintendents.

The display of controversial placards in front of the building by the Grievants is a just basis for disciplinary action. In the case of William J. Gandreau, Jr., [sic] his actions do not justify discharge, but do justify disciplinary suspension. In the case of William J. Gandreau, Sr., [sic] taking into consideration the mandated "need for cooperation," Grievant's actions were anything but cooperative and justify his discharge.⁹

B. Discussion and Conclusions

1. Status of Gaudreau Sr.

For purposes of determining whether Gaudreau Sr. is a supervisor as claimed by Respondent, I shall credit the testimony of Gaudreau Sr. wherever it is contradicted by the testimony of Thomas B. Tyrrel or of Cohen. I find that the testimony of Gaudreau Sr. was clear and specific and was supported by actual examples of events at the workplace and I conclude that Gaudreau Sr. was a credible witness. There is no dispute that Gaudreau Sr. was hired for the supervisory position of superintendent of the building. I find, however, that in 1989, Gaudreau Sr. experienced a marked change in his job duties and responsibilities. I find that the record shows that Gaudreau Sr. was stripped of the power to fire employees and of the power effectively to recommend dismissal. I find that Gaudreau was not involved in the decision to lay off an employee. I find that there is no evidence in the record that Gaudreau Sr. actually hired any employees after 1989; he had the ability, along with all the other employees, to telephone persons who were known to be able to fill in for absent employees and to ask those persons to come to work. After 1989, Gaudreau Sr. no longer computed hours worked and pay due to the other employees, and the individually recorded hours were given to the controller by any available employee. In 1989, Gaudreau Sr. began punching a timeclock in common with the other employees. After 1989, Gaudreau Sr. did not schedule employees' hours of work and time off; this task was performed by Oswald and the son of Robert Tyrrel. In 1990 or 1991, Gaudreau Sr. was stripped of the title of superintendent on his uniform and was told that he was not running the building. The record contains no credible evidence that Gaudreau Sr. had the authority to take any of the actions enumerated in Section 2(11)

⁷These references were to an old Mercedes that Thomas B. Tyrrel drove to work and to an apartment owned by B. H. Tyrrel in the Downtown Athletic Club.

⁸Because the letter stated that the prior infractions had been overlooked, I ruled that they had been condoned by Respondent and I precluded Respondent from introducing testimony concerning the purported infractions. It is clear from the letter than any prior acts were not the cause of the discharge.

⁹ The award provided that Gaudreau Jr. be returned to work without any backpay. In the event, he was suspended from December 2, 1992, until October 4, 1993, without pay.

of the Act that have not been specifically discussed herein. In fact, in 1991, Thomas B. Tyrrel told Gaudreau Sr. that Respondent would no longer pay him the 6-hour bonus because he was no longer performing the job of superintendent. Although the Union was successful in having the bonus restored, that does not show conclusively that Gaudreau Sr. was still the superintendent. Without any detailed explanation for the restoration of the bonus appearing in the record, it shows merely that the Union was able to prevent any diminution in Gaudreau's pay. I find that after 1989, Gaudreau Sr. was not a supervisor and that he was therefore an employee under the Act on December 2, 1992.

2. The concerted and protected nature of the employees' actions

It is well settled that an employer may not discipline employees for engaging in concerted protected activities. Here, Respondent's employees were entitled to certain wages under the collective-bargaining agreement with the Union. Further, by special agreement with the Union, Respondent had promised to give the employees notice and interim pay if their regular paychecks would be delayed beyond the regular Tuesday payday. On December 1, 1992, the employees learned that they would not receive their paychecks; Respondent had not given them advance notice nor was it prepared to provide interim pay. The next day, two employees, Gaudreau Sr. and Gaudreau Jr. posted signs on their cars that were parked on the public street in front of Respondent's premises in order to protest the failure to receive their wages and to demand that they be paid. Clearly these two employees were engaging in a concerted activity; they had "joined together in order to achieve common goals." NLRB v. City Disposal Systems, 465 U.S. 822, 830 (1984). Even if only one employee had posted the signs, the Supreme Court has held that, "[a] lone employee's invocation of a right grounded in his collective-bargaining agreement is . . . a concerted activity in a very real sense." 465~U.S. at 832.

NLRB v. Deauville Hotel, 751 F.2d 1562 (11th Cir. 1985), cited by the Respondent is not apposite. In that case, a single employee complained about his job duties to other workers and told management that "he was not happy." The court found that the employee had engaged in "purely personal griping and complaining," and that his conduct did not have the object of initiating group action nor did it have some relation to group action in the interests of the employees. Id. 751 F.2d at 1571.

Respondent argues that the conduct of Gaudreau Sr. and Gaudreau Jr. was "spiteful, malicious, specifically prohibited by the Collective Bargaining Agreement, not sanctioned or permitted by the Union, and clearly constituted an illegal and prohibited activity." Although Respondent's brief asserts that the Union advised that displaying the signs was not sanctioned by the Union, the record contains no reliable basis for this conclusion. Although the contract, with certain exceptions, prohibits any "work stoppage, strike, lockout or picketing," the record is clear the two employees did not strike or cease work and did not urge other employees to engage in a work stoppage. 10 Whether or not the display of signs

on the employees' cars while parked on the public street amounted to picketing, I find that such a display was lawful because it did not seek to interfere with the Respondent's normal functioning. Employees have the right to engage in concerted activities to demand the payment of wages due to them. Any waiver of that statutory right in a collective-bargaining agreement must be clear and unmistakable. In the instant contract, there is no such clear and unmistakable waiver of the right to post signs to demand the payment of wages. A reading of article IX of the contract, entitled "No Strikes or Lockouts," shows that the parties were attempting to deal with actions by employees that had the object of interfering with the employer's business. Indeed, the picketing contemplated by the contract is mentioned only in the context of a cessation of work. Here, the signs did not call on other employees or the public to refuse to enter the building or to cease doing business with anyone in the building. The signs did not contain any language that would reasonably prompt a person who had come to the building to turn back. Contrary to Respondent's argument, there is no reliable evidence in the record that the signs interfered with the normal activities of tenants and it was not established by any evidence in the record that the signs were defamatory. I find that there was no clear and unmistakable waiver of the employees' rights to engage in concerted activities relating to wages. American Motors Corp., 236 NLRB 1646, 1648-1650 (1978); and National Can Corp., 200 NLRB 1116, 1123 (1972).

It is possible, of course, for employees engaged in concerted activity to lose the protection of the Act. Respondent urges that the employees' acts here were directed against tenants and that this should strip them of their statutory rights. It should be emphasized that Respondent's building is a family-owned building: the sign over the entrance says "Tyrrel" and the main tenants are businesses owned and operated by members of the Tyrrel family. Thomas B. Tyrrel, the president of Respondent, is also the president of Benjamin H. Tyrrel. A cousin of Thomas B. Tyrrel operates TTF and a son of this cousin scheduled the work of the unit employees. On December 1, 1992, when Gaudreau Sr. asked whether the employees would receive their paychecks, Thomas B. Tyrrel replied, "I don't have any money; none of my companies are getting paid." Thus, Thomas B. Tyrrel emphasized the interconnected nature of the family businesses and of their financial problems. It was fair for the employees of Respondent to view the finances of all of the Tyrrel businesses as being to some extent intertwined and it was fair for them to conclude that if the Tyrrel businesses that were tenants of Respondent paid their rent, then the employees of Respondent would receive their wages. Given Thomas B. Tyrrel's statement that he had no money and that none of his companies would be paid, Respondent can hardly complain that its employees took Tyrrel at his word and directed their complaints at all of his companies. I find that the signs posted in the cars did not go beyond the protection of the Act. The signs related directly to a legitimate grievance—the failure to pay employees' wages. The signs did not disparage the employer's services, they did not contain deliberate or reckless untruths, and they were not violent or disruptive to dis-

¹⁰ The contract states that "[t]here shall be no work stoppage, strike, lockout or picketing except as provided" elsewhere in the contract. The exceptions deal with Union efforts to enforce awards

and judgments for payment of wages and benefits to employees and to preserve unit work.

cipline. Many Board, circuit court and Supreme Court cases might be cited in support of this brief summary of the well-established standards relating to protected activities of employees. It is not necessary, however, to provide any citation other than *NLRB v. Owners Maintenance Corp.*, 581 F.2d 44 (2d Cir. 1978), a case that decided a strikingly similar question involving a predecessor to the instant contract between the Union herein and the RAB. Thus, Respondent violated Section 8(a)(1) of the Act by discharging William J. Gaudreau Sr. and William J. Gaudreau Jr.

It remains only to determine whether the Board should defer to the award of Arbitrator Herzog. In Spielberg Mfg. Co., 112 NLRB 1080, 1082 (1955), the Board stated that deferral to the award of an arbitrator was appropriate if the arbitration "proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act." Here, the General Counsel argues that the award of Arbitrator Herzog is repugnant to the Act, urging that the display of signs demanding the payment of wages is a protected activity and that the arbitrator ratified the imposition of discipline on both Gaudreau Sr. and Gaudreau Jr. for the "display of controversial placards." In NLRB v. Owners Maintenance Corp., supra, the employees' protests were contained in leaflets that accused the employer of racist, discriminatory, antilabor, and antiwoman practices and of conducting a campaign of terror and harassment against employees. The contract arbitrator found that the leaflets constituted gross disloyalty and justified the refusal to reinstate the employees. The Second Circuit held that the leaflets did not lose the protection of the Act even though they contained some strong language; the court decided that "the Board need not . . . have deferred to the arbitrator's misguided decision." Supra at 581 F.2d at 50. In this case, Arbitrator Herzog's finding that the display of controversial placards is a just basis for disciplinary action is similarly misguided; the award is not susceptible to an interpretation that is consistent with the employees' rights to engage in concerted activity under Section 7 of the Act. See, Olin Corp., 268 NLRB 573 (1984). Therefore, I conclude that the award is repugnant to the Act and that it would not be proper to defer to the arbitration award.

CONCLUSION OF LAW

By discharging employees William J. Gaudreau Sr. and William J. Gaudreau Jr. for engaging in protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). William J. Gaudreau Jr.'s unlawful discharge

was converted to an unlawful suspension by the award of the arbitrator that has been found repugnant herein; therefore, William J. Gaudreau Jr. must be made whole for the period from December 2, 1992, until October 4, 1993.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, 110 Greenwich Street Corp., New York, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discharging its employees because they engage in protected concerted activities.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Offer William J. Gaudreau Sr. immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision, and make whole William J. Gaudreau Jr. for the loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.
- (b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.
- (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (d) Post at its building at 110 Greenwich Street, New York, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities by

displaying signs protesting your failure to receive your wages.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer William J. Gaudreau Sr. immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and WE WILL make William J. Gaudreau Jr. whole for his loss of earnings and other benefits resulting from his discharge that was converted to an unlawful suspension, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and suspension and that the discharge and suspension will not be used against him in any way.

110 Greenwich Street Corp.